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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,887	09/06/2005	Brian Leslie Smalley	R031 1160.1	4424

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WOMBLE CARLYLE SANDRIDGE & RICE, PLLC

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EXAMINER

COLLINS, MICHAEL

ART UNIT

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3651

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DELIVERY MODE

08/07/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/523,887

Applicant(s)

SMALLEY ET AL.

Examiner

MICHAEL K. COLLINS

Art Unit

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6, 9 and 13-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 9 and 13-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/04/2008 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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4. Claims 1-6, 9, and 13-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farquhar (USP 3,265,283) and further in view of Oliff et al. (USP 5,427,242).

Regarding claim 1, Farquhar discloses a paperboard carton for articles arranged in an end-on-end relationship in at least two layers, the carton comprising:

- six sides, the six sides including a first side disposed between a second side and a third side, the first side being perpendicular a fourth side, the second side, and the third side, the second side and the third side being parallel, and
- a removable portion that defines an opening in the first side for article removal,
- a hinged flap adjacent the removable portion defined at least partially by a first cut and a second cut extending from the removable portion, the first cut having a first end proximate the removable portion and a second end distal the removable portion, the second cut having a first end proximate the removable portion and second end distal the removable portion, the second end of the first cut and the second end of the second cut intersected by respective lines that prevent the first cut and the second cut from extending beyond their intended length,
- wherein the hinged flap, when engaged, enlarges the opening to create an enlarged opening, the enlarged opening enabling easier container removal from the carton than the opening alone.

However, he does not disclose a divider pad provided between the adjacent end-on-end layers of articles. Oliff et al. disclose a paperboard carton for articles arranged in an end-on-end relationship in at least two layers including a divider pad provided between

the adjacent end-on-end layers of articles. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify Farquhar by including in the carton a divider pad provided between the adjacent end-on-end layers of articles, as disclosed by Oliff et al., for the purpose of enabling the carton to divide the articles into groups (see column 1 lines 51-59).

Regarding claim 2, Farquhar in view of Oliff et al. disclose a carton that is obvious over the carton of claim 1. Furthermore, Oliff et al. disclose a carton wherein the divider pad is secured to the inside of the carton. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify Farquhar by including in the carton a divider pad that is secured to the inside of the carton, as disclosed by Oliff et al., for the purpose of providing anchoring means for securing the divider panel to the end closure of the carton (see column 1 lines 58-59).

Regarding claim 3, Farquhar in view of Oliff et al. disclose a carton that is obvious over the carton of claim 1 wherein the removable portion extends into both the second and the third sides (see Farquhar Figure 1).

Regarding claim 4, Farquhar in view of Oliff et al. disclose a carton that is obvious over the carton of claim 1 wherein the divider pad has a fold down gluing panel (see Oliff et al. Figure 6).

Regarding claim 5, Farquhar in view of Oliff et al. disclose a carton that is obvious over the carton of claim 1 wherein when the opening is created, all of the containers in the carton are prevented from rolling out (see Farquhar Figure 2).

Regarding claim 6, Farquhar in view of Oliff et al. disclose a carton that is

obvious over the carton of claim 1 wherein the first cut and the second cut are aligned to allow the hinged flap to be pivoted therebetween (see Farquhar Figure 5).

Regarding claim 9, Farquhar in view of Oliff et al. disclose a carton that is obvious over the carton of claim 1 wherein the six sides are arranged substantially rectangular.

Regarding claim 13, Farquhar discloses a blank capable of being formed into a paperboard carton for articles arranged in an end-on-end relationship in at least two layers, the blank having six sides, the six sides including a first side disposed between a second side and a third side, the first side being perpendicular a fourth side, the second side, and the third side, the second side and the third side being parallel, and a removable portion (22) that defines an opening in the first side for article removal, a hinged flap adjacent the removable portion defined at least partially by a first cut (36,36) and a second cut (36,36) extending from the removable portion, the first cut having a first end proximate the removable portion (22) and a second end distal the removable portion, the second cut (36,36) having a first end proximate the removable portion and second end distal the removable portion, the second end of the first cut and the second end of the second cut intersected by respective lines (38) that prevent the first cut and the second cut from extending beyond their intended length, wherein the hinged flap, when engaged, enlarges the opening to create an enlarged opening, the enlarged opening enabling easier container removal from the carton than the opening alone.

However, he does not disclose a divider pad provided between the adjacent end-on-end layers of articles. Oliff et al. disclose a blank for articles arranged in an end-on-

end relationship in at least two layers including a divider pad provided between the adjacent end-on-end layers of articles. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify Farquhar by including in the carton a divider pad provided between the adjacent end-on-end layers of articles, as disclosed by Oliff et al., for the purpose of enabling the carton to divide the articles into groups (see column 1 lines 51-59).

Regarding claim 14, Farquhar in view of Oliff et al. disclose a blank that is obvious over the blank of claim 13. Furthermore, Oliff et al. disclose a carton wherein the divider pad is secured to the inside of the carton. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify Farquhar by including in the carton a divider pad that is secured to the inside of the carton, as disclosed by Oliff et al., for the purpose of providing anchoring means for securing the divider panel to the end closure of the carton (see column 1 lines 58-59).

Regarding claim 15, Farquhar in view of Oliff et al. disclose a blank that is obvious over the blank of claim 13 wherein the removable portion extends into both the second and the third sides (see Farquhar Figure 1).

Regarding claim 16, Farquhar in view of Oliff et al. disclose a blank that is obvious over the blank of claim 13 wherein the divider pad has a fold down gluing panel (see Oliff et al. Figure 6).

Regarding claim 17, Farquhar in view of Oliff et al. disclose a blank that is obvious over the blank of claim 13 wherein when the opening is created, all of the containers in the carton are prevented from rolling out (see Farquhar Figure 2).

Regarding claim 18, Farquhar in view of Oliff et al. disclose a blank that is obvious over the blank of claim 13 wherein the six sides can be arranged to be are substantially rectangular.

Regarding claim 19, Farquhar in view of Oliff et al. disclose a blank that is obvious over the blank of claim 13 wherein the first cut and the second cut can be aligned to allow the hinged flap to be pivoted therebetween (see Farquhar Figure 5).

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL K. COLLINS whose telephone number is (571)272-8970. The examiner can normally be reached on 8:30 am - 5:00 pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene O. Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M.K.C.
7/31/2008

/Gene Crawford/
Supervisory Patent Examiner, Art
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